



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: October 13, 1999

SUBJECT: MUR 4434-General Counsel's Report.

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

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BEFORE THE FEDERAL ELECTION COMMISSION

Oct 13 10 11 PM '99

In the Matter of)

Outback Steakhouse of Florida, Inc.;)
Joseph J. Kadow; Robert Basham; Chris)
Sullivan; and Mark Sharpe for Congress)
and Mark Brown, as treasurer)

MUR 4434

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 20, 1999, the Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter with respect to Respondents Outback Steakhouse of Florida, Inc. ("Outback") and its officer, Joseph J. Kadow. The Commission had previously found reason to believe that Outback and Mr. Kadow had each violated 2 U.S.C. § 441b(a) through the solicitation of contributions to Mark Sharpe for Congress ("the Sharpe Committee" or "the Sharpe campaign") from outside of Outback's restricted class, and through the receipt of contributions intended for the Sharpe campaign at Outback headquarters, and their subsequent delivery to the Sharpe campaign.

In choosing to proceed, the Commission had two documents in front of it which evidenced that these activities had taken place. The first document was a letter signed by Joseph Kadow on Outback stationery dated July 14, 1994 to John Meshad. In the letter, Mr. Kadow solicited a contribution from Mr. Meshad for the Sharpe campaign, and asked that any such

contribution be sent to him at Outback headquarters. Mr. Kadow informed Mr. Meshad that he had been "collecting checks and giving them to Mark to ensure that he understands the extent of support he is receiving from the restaurant industry." The second document was an undated, computer-generated print-out of a letter addressed to Jim Williams, returning a check intended for the Sharpe campaign, but issued to Outback. The letter had a typed signature line reading "Carol Brennan," but was unsigned. Ms. Brennan is Mr. Kadow's secretary, and Outback had previously acknowledged to the Commission, in its response to the complaint in this matter, that she had performed work on behalf of the Sharpe campaign, albeit on a voluntary basis. The letter first thanked Mr. Williams on behalf of Outback Chief Executive Officer Robert Basham and Outback for contributing to the Sharpe campaign. It next noted that his check had been made payable to Outback Steakhouse, and stated that, "[w]hile we would be happy to endorse this check over to the Sharpe campaign, because of the Federal Election Commission's strict rules and guidelines, it would be more appropriate for you to reissue a check made payable to Sharpe for Congress." The letter then informed Mr. Williams that he could send the check to "us" and "we" would forward it to the Sharpe campaign.

II. DISCUSSION

In preparation for the drafting the General Counsel's Brief in this matter, this Office re-evaluated the case against Outback and Mr. Kadow. In doing so, this Office has concluded that the available evidence is certainly suggestive of wrongdoing, although not of the quality and quantity this Office would ordinarily look to in recommending that the Commission find probable cause to believe that violations have occurred.

First, the matter is somewhat complicated by the fact that Mr. Kadow was a senior volunteer for the Sharpe campaign, and could contend that he was acting in that capacity rather than his corporate capacity. Second, the physical evidence regarding Respondents' violations is meager. Despite this Office's efforts to find additional evidence, *see* the General Counsel's Report dated July 6, 1999, the only letter we could prove had been sent and received was the Meshad letter. The Meshad letter represents the best evidence that not only was Outback soliciting someone outside of Outback's restricted class, but also that Outback had been otherwise facilitating the making of contributions to the Sharpe campaign. However, while the letter strongly indicates that such activities were occurring, it does not provide any specifics as to the volume, amounts, circumstances and contributors involved in such activities. While Mr. Williams has admitted to staff of this Office that he did indeed make a contribution to the Sharpe campaign, the Williams letter exists only in computer-generated form, and although this

Office believes that certain factors support the conclusion that this letter was sent,⁴ it is not clear, and Mr. Williams could not confirm, that he had ever received such a letter. In addition, the Williams letter is confined to Mr. Williams, and does not by itself provide support for a pattern of improper solicitation and facilitation.

As a result of the above, this Office believes that proceeding further with this matter as to these Respondents would not be the best use of Commission resources. Therefore, this Office recommends that the Commission take no further action against Outback Steakhouse of Florida, Inc., Joseph J. Kadow, Robert Basham, and Chris Sullivan, and that it close the file as to them. We further recommend that the Commission approve appropriate admonishment letters.

Regarding the Sharpe Committee, its last filing was its 1995 Mid-Year Report, and it has not responded to numerous attempts at contact by this Office and the Reports Analysis Division. A letter was received on November 7, 1995 from Mark Sharpe's 1996 committee, Friends of Mark Sharpe, informing the Commission that Friends of Mark Sharpe would assume all of the Sharpe Committee's debts. Although the Sharpe Committee has obviously failed to follow

⁴ First, the contents of the Meshad letter were originally produced by Outback in similar form to the letter to Jim Williams. Thus, it is reasonable to assume that the Williams letter was also sent. In addition, the person whose name appears on the signature line of the letter, Carol A. Brennan, is an Outback secretary whom Outback has identified as having performed work (albeit on a voluntary basis) for the Sharpe campaign while at Outback headquarters. Moreover, the contents of the letter are very fact-specific, and were unlikely to have been written and then not sent.

Commission procedure regarding termination, it appears that it no longer exists, and that any further attempts to enforce action against it would be extremely difficult, and probably futile. In addition, the concerns expressed above with regard to proceeding against Outback and Mr. Kadow also apply with regard to the Sharpe campaign. Accordingly, this Office recommends that the Commission take no further action against Mark Sharpe for Congress and Mark Brown, as treasurer, and close the file as to them.⁶


III. RECOMMENDATIONS

1. Take no further action against Mark Sharpe for Congress and Mark Brown, as treasurer; Outback Steakhouse of Florida, Inc.; Joseph J. Kadow; Robert Basham; and Chris Sullivan; and close the file as to them.
2. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

10/13/99
Date

BY:


Lois G. Lerner
Associate General Counsel

Attachment
September 23, 1999 letter

Staff assigned: Tony Buckley


⁶ In our September 24, 1999 memorandum to the Commission referenced *supra*, this Office informed the Commission that we were proceeding with respect to Daniel M. Doyle, and that we were awaiting receipt of an agreement tolling application of the statute of limitations. An agreement tolling application of the statute of limitations for 90 days has been received, and this Office is currently obtaining information regarding the questionable contributions detailed in the Commission's factual and legal analysis issued to Mr. Doyle.



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM: Mary W. Dove/Lisa R. Davis
Acting Commission Secretary 

DATE: October 18, 1999

SUBJECT: MUR 4434 - General Counsel's Report
dated October 12, 1999.

The above-captioned document was circulated to the Commission
on Wednesday, October 13, 1999.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Elliott	—
Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for

Tuesday, October 26, 1999.

Please notify us who will represent your Division before the Commission on this matter.